

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7891 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No
2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

Versus

Appearance:

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 12/02/99

ORAL JUDGEMENT

1. The petitioner, through this petition under Article 226 of the Constitution of India, has challenged the detention order dated 25.8.1998 as contained in Annexure : A to the writ petition. This order was passed by the District Magistrate, Sabar Kantha at Himatnagar under Section 3(2) of the Prevention of Black Marketing of Essential Commodities and Maintenance of Supplies Act, 1980 (for short "the Act").

2. The petitioner is proprietor of Ramesh Trading Co. and is possessing retail licence of crude/kerosene under the provisions of the Gujarat Essential Articles (Licence, control and stock declaration) Ordinance, 1981. On 29.5.1998 an information was received by the Supply Inspector that eight barrels of crude kerosene were loaded in a tempo from the shop of Atul Trading Co., Modasa. The two barrels of kerosene were loaded in another tempo and were brought by the labourer from the shop of the petitioner. It was found to be unauthorised

transaction. Other irregularities were also noticed which are detailed in the grounds of detention. The detaining Authority was subjectively satisfied that the activities of the petitioner were obstructing smooth supply of kerosene and crude oil which are essential commodities declared under the Act and the Rules. From the grounds of detention it appears that some consideration of alternative remedy was also in the mind of the detaining Authority. It was found that preventive detention is the only efficacious remedy. Consequently the impugned order was passed.

3. This order has been challenged in this writ petition only on two grounds.

4. The first contention is that representation dated 31.8.1998 sent by the detenu was not forwarded by the concerned authority to the Central Government in time and that it was received after considerable delay by the Central Government on 23.9.1998. There has been some confusion in the course of argument from the side of the Advocate representing Union of India and the learned A.G.P. about the date of this representation. Learned Counsel for the petitioner has pointed that this representation was dated 31.8.1998 and this date was verified by Shri B.T.Rao, learned Counsel appearing for the Union of India from the file of the learned Counsel of the petitioner. Shri B.T.Rao has argued that only one representation dated 17.9.1998 was received by the Central Government. According to the learned Counsel for the petitioner no representation dated 17.9.98 was sent by the petitioner. It is, therefore, obvious that there is something fishy and some alteration in the date of representation must have been made by the Jail Authorities to save their skin from delay in forwarding the representation. Without any material on the file of this court the learned A.G.P. argued that the representation was forwarded by the Jail Authority on 2.9.1998. In absence of material on record this contention cannot be accepted. From the Affidavits of the detaining Authority and of the State Government it is found that there is no explanation as to when Jail Authority forwarded the representation of the petitioner to the Central Government. Likewise there is nothing in the Affidavit on record as to when this representation was forwarded by the State Government to the Central Government. It is thus a case of lethargy on the part of the Jail Authority who is arrayed as respondent No.4 in this writ petition and also lethargy on the part of the State Government represented by respondents No.1 & 2. On account of this lethargy and sitting tight over the

representation it reached late to the Central Government and the Central Government proceeded to decide the representation thereafter expeditiously. Thus, there was no delay on the part of the Central Government in deciding the representation, but certainly in action and lethargy of the State Government and the Jail Authority has infringed the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution of India which confers on him right to get his representation disposed of expeditiously. This itself is a ground for quashing the impugned detention order.

5. Another contention has been that without application of mind to the fact that the licence of the petitioner was already suspended vide order dated 1.7.1998, the impugned detention order was passed on 25.8.1998. It is not a case where the factum of suspension of licence was not in the knowledge of the detaining Authority. In Para : 13 of the grounds of detention the detaining Authority clarified that the petitioner's licence was suspended on 1.7.1998 for a period of 90 days. Before expiry of suspension period the petitioner applied on 2.9.1998 that his licence be cancelled, but till date the Mamlatdar has not taken any action on this request of the petitioner. In view of these events it can hardly be said that the petitioner could have approached the competent Court for getting the stay order against order suspending his licence more particularly when he himself was eager as early as on 2.9.1998 that his licence may be cancelled. The grounds of detention show that the petitioner was a licence holder. He could not have purchased crude, kerosene or volatile kerosene from open market nor could have sold the same in black market after suspension of licence. The apprehension in the mind of the detaining Authority that immediate prevention of black marketing activity of the petitioner could be secured only by passing order for preventive detention is nothing, but his imagination. No doubt if alternative remedies were under consideration before the Detaining Authority and were actually considered this court will not interfere in subjective satisfaction of the detaining Authority. However, if the detaining Authority has considered the alternative remedy in apparently, arbitrary manner without considering how a person whose licence was cancelled could obtain crude kerosene or purified kerosene to sell it in black market it would not be in the interest of justice for this court to put a blank seal to such arbitrary subjective satisfaction of the detaining Authority. On the face of the record the subjective satisfaction of the detaining Authority on this point suffers from non-application of

mind to the material on record and is certainly arbitrary. Improper and arbitrary consideration of alternative efficacious remedy and less drastic remedy will therefore render the detention order illegal and invalid.

6. For the aforesaid reasons the impugned order of detention cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 25.8.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

(D. C. Srivastava,J)

* * * * *

sas